

FUEL EXPLORATION, INC.

IBLA 82-594

Decided February 3, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application W 73719.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:
First-Qualified Applicant

An oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

APPEARANCES: Susan D. Mueller, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Fuel Exploration, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 4, 1982, rejecting its simultaneous oil and gas lease application for failure to file a complete list of corporate officers with its application, pursuant to 43 CFR 3102.2-5(a)(3) (1981). Appellant's application was drawn with first priority for parcel WY 9062 in the November 1980 simultaneous oil and gas lease drawing. The application was signed by D. W. Shewmake, executive vice-president, on November 10, 1980, and referenced a corporate qualifications file which bore serial number C 28832. The decision stated that the list of officers named on appellant's statement of corporate qualifications did not include D. W. Shewmake nor did it indicate that he had been authorized to execute documents on appellant's behalf.

The case file reflects that appellant's statement of corporate qualifications was accepted by the Colorado State Office on November 17, 1980. The qualifications statement indicates that the officers authorized to act on behalf of Fuel Exploration, Inc., in matters relating to oil and gas leases were Raymond D. Danton, president; Charles G. Peterson, vice-president and Sue Parks, secretary-treasurer. The same three individuals were named as the only corporate officers of Fuel Exploration, Inc. Appellant's statement regarding stockholders owning more than 10 percent of its stock indicated that Procoil, Inc., owns 100 percent of the stock of Fuel Exploration, Inc.

On appeal appellant asserts that Fuel Exploration, Inc., and Fuel Exploration and Management Company, Inc., are wholly owned subsidiaries of Procoil, Inc.; that the three corporations share the same office address, facilities, personnel, and business purposes; and that the officers and directors of the three corporations are practically identical. Appellant further asserts that the Colorado State Office, BLM, recognized the interrelated nature of the three corporations by issuing a single corporate qualifications number to be used by all three corporations when filing Federal oil and gas lease applications. Appellant argues that because of the interrelationship of these three corporations, BLM would regard each corporation as having an interest in the application of the other corporations, citing June Oil and Gas, Inc., 41 IBLA 394, 86 I.D. 374 (1979), aff'd, June Oil and Gas, Inc. v. Andrus, 506 F. Supp. 1204 (D. Colo. 1981). Therefore, appellant argues:

If the BLM is going to consider these three corporations [Fuel Exploration, Inc., Fuel Exploration and Management Company, Inc., and Procoil, Inc.] as one entity, it must do so consistently. It cannot determine that all three corporations will be regarded as one entity for certain specific purposes, namely prohibited multiple filings, and arbitrarily decide to treat them as separate entities for purposes of acquiring leases. When BLM considers all three corporations as one entity with regard to the corporate qualifications, any officer qualified to act under Serial Number C-28832 is qualified to act for any one of the corporations that are required to refer to Serial Number C-28832 in filing lease applications.

Appellant asserts that Daniel W. Shewmake was listed as an officer qualified to act with regard to oil and gas leases under serial number C-28832; that Fuel Exploration, Inc., was authorized to refer to that serial number; and that BLM in assigning appellant, Fuel Exploration and Management Company, Inc., and Procoil, Inc., the same serial number, thereby treating them as one entity for the purposes of holding oil and gas leases, cannot now disregard this fact and treat them as separate entities.

[1] Appellant's argument confuses the issue of whether an applicant has an interest in another application filed for the same parcel in a drawing, which was the subject of June Oil and Gas, Inc., *supra*, with the question of

whether an applicant has filed the required evidence of corporate qualifications. The applicable regulation, 43 CFR 3102.2-5 (1981) ^{1/} published in the Federal Register of May 23, 1980, effective June 16, 1980, provides, in relevant part:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

* * * * *

(3) a complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing[.]

45 FR 35162 (May 23, 1980). ^{2/}

The applicable regulation, 43 CFR 3102.2-5, in effect at the time of the November 1980 drawing, clearly required that a "complete list of corporate officers" be submitted with a noncompetitive oil and gas lease application. In lieu of submitting such a list, an applicant was entitled to reference by serial number a statement of corporate qualifications, including such a list, on file with a BLM state office. 43 CFR 3102.2-1(c). However, 43 CFR 3102.2-1(c) also provides: "Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current." Appellant was under a clear mandate to keep its qualifications file "current."

In submitting its noncompetitive oil and gas lease application, appellant referenced, by serial number, the records containing its previously filed statements of qualifications. However, the list of corporate officers on file was not complete, in that it did not include the name of D. W. Shewmake.

^{1/} On Feb. 26, 1982 the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications previously required by 43 CFR 3102.2-5. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party (see James E. Strong, 45 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of the second and third priority applicants coupled with the obligation to issue a noncompetitive lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); see Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

^{2/} The prior regulation, 43 CFR 3102.4-1 (1979), provided, in relevant part: "If the offeror is a corporation, the offer must be accompanied by a statement showing * * * (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters."

Under the prior regulation, 43 CFR 3102.4-1 (1979), we consistently held that the requirement of submission of a corporate qualifications statement with an oil and gas lease offer or reference to records where such material had previously been filed was mandatory and that failure to do so would result in rejection of the lease offer. Ari-Mex Oil & Exploration, Inc., 53 IBLA 37 (1981); Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980). The applicable regulation is similarly couched in mandatory terms, and likewise the Board has consistently held that failure to submit a complete list of corporate officers with the application, or to reference such a list, requires rejection of the application. Wilco Properties, Inc., 68 IBLA 215 (1982); Adobe Oil & Gas Corp., 63 IBLA 106 (1982); Altex Oil Corp., 61 IBLA 270 (1982). Moreover, 43 CFR 3112.6-1(b) provides, in relevant part: "The application of any applicant who * * * has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected." (Emphasis added.) Accordingly, we conclude that it was proper for BLM to reject appellant's application.

The purpose of requiring the disclosure of all corporate officers is to permit BLM to identify those situations where corporate officers and the corporation may have engaged in a multiple filing, in violation of 43 CFR 3112.6-1. See preamble to proposed revision of 43 CFR Part 3100, 44 FR 56177 (Sept. 28, 1979). The aim is to determine what other applications for a particular parcel the corporation may have an interest in by virtue of other filings made by corporate officers. See Altex Oil Corp., *supra* at 275.

Appellant has not convinced us that June Oil and Gas, Inc., *supra*, is applicable to the case at bar. That case held that a pattern of interlocking officers and directors between two corporations was sufficient to establish an interest of each corporation in the filings of the other such that an improper multiple filing under the regulations at 43 CFR Subpart 3112 occurred when both corporations filed an application for the same parcel in the simultaneous filing procedure. This holding neither treated the corporations as one entity nor did it dispense with the requirement that each corporate applicant for a Federal oil and gas lease establish its qualifications in compliance with the regulations. The record indicates that at the time of filing D. W. Shewmake had not been disclosed to BLM as an officer authorized to act on behalf of Fuel Exploration, Inc., in matters related to oil and gas leases. The fact that he was authorized to act on behalf of companies interrelated with Fuel Exploration, Inc., does not relieve appellant of its obligation to comply with the regulations by providing a complete list of the officers of the corporation as well as the name or names of those authorized to act on behalf of the company in matters related to oil and gas leases. ^{3/} Since

^{3/} The fact that these corporations were assigned the same reference number which they could use to refer to their evidence of qualifications is irrelevant. As a general practice, each BLM state office maintaining such reference files assigns a single reference number for evidence of qualifications filed for reference with that office on behalf of all lease applicants or offerors.

appellant did not submit or reference a complete list, its application was defective and BLM properly rejected it. Impel Energy Corp., 64 IBLA 92 (1982). The deficiency is not curable after the drawing because of the intervening rights of the applicants receiving second and third priority. Id.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

